

Before the
Federal Communications Commission
Washington, D.C. 20544

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

IB Docket No. 96-261

International Settlement Rates

REPLY COMMENTS OF TRICOM, S.A..

TRICOM, S.A. ("TRICOM") respectfully submits its Reply Comments in response to the Federal Communications Commission ("Commission") *Notice of Proposed Rulemaking in the Matter of International Settlement Rates*, issued December 19, 1996. TRICOM is a full service telecommunications carrier that provides international and domestic long distance service, as well as local service in the Dominican Republic. It is owned 60% by Dominican private interests and 40% by Motorola of the United States. TRICOM entered the full service telecommunications service market in the Dominican Republic in 1994. Since that time, the accounting rate between the Dominican Republic and the United States has declined by 38% (from \$1.29 to \$0.80), and we foresee the accounting rate decreasing even further in the near term to \$0.70 which would increase the rate of decline to 54%. TRICOM's entry into the marketplace in the Dominican Republic and its ability to sustain investment sufficient to combat the anticompetitive practices of CODETEL, the former monopoly Dominican carrier, is directly responsible for reducing accounting rates.

TRICOM believes that its individual experience with expanded competition in the Dominican Republic's telecommunications market and the fact that, since the Commission's

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issuance of its proposed accounting rate scheme, the Dominican Republic and over 60 other countries around the world agreed to a World Trade Organization ("WTO") agreement, a part of which includes a single set of regulatory principles applicable to opening telecommunications service markets to competition ("Regulatory Principles"), render the Commission's unauthorized unilateral proposal to impose international accounting rate benchmarks unnecessary.

While retaining its position that the Commission does not have authority to set accounting rates for other countries and that the WTO Agreement renders the Commission's proposal unnecessary, in the event that the Commission insists upon promulgating a new scheme for setting accounting rate benchmarks, TRICOM suggests that a better mechanism than that proposed by the Commission would reflect country-specific needs by extending the transition period and raising the level of the settlement rate benchmark for countries such as the Dominican Republic.

I. THE COMMISSION DOES NOT HAVE AUTHORITY TO UNILATERALLY IMPOSE SETTLEMENT RATES ON FOREIGN CARRIERS

A significant number of commenters asserted and TRICOM concurs that unilateral imposition by the Commission of specific accounting rates that foreign carriers charge to terminate inbound traffic in their countries exceeds the authority granted to the Commission by the Telecommunications Act of 1934, as amended by the Communications Act of 1996.¹

1. See Comments of the Association of Telecommunications Enterprises of the Andean Subregional Agreement ("ASETA") to the Notice of Proposed Rulemaking (filed on February 7, 1997) at 1; Comments of Cable & Wireless, PLC at 1; Comments of Chunghwa Telecom at 2; Comments of Compania Telefonos de Chile -- Transmisiones Regionales, S.A. at 2-5; Comments of the Hispanic-American Association of Research Centers and Telecommunications Companies ("AHCJET") at 3; Comments of Hong Kong Telecom International ("HKTI") at 22; Comments of INDOSAT at 1; Comments of International
(continued...)

Moreover, TRICOM believes, along with most other commenters, that the Commission's proposed rule, which, if adopted, would direct U.S. carriers not to pay previously-negotiated settlement rates to foreign carriers, contradicts the principles and regulations of the International Telecommunication Union ("ITU") and that accounting rates should be addressed in a multilateral, international forum.² ITU rules require relations between telecommunications

1.(...continued)

Digital Communications ("IDC") at 2; Comments of International Telecom Japan Inc. ("ITJ") at 3; Comments of Jabatan Telekom Malaysia ("JTM") at 2; Comments of the Justice Technology Corporation ("JTC") at 2; Comments of Kokusai Denshin Denwa Co., Ltd. ("KDD") at 2-7; Comments of Latttelkom Sia ("Latttelkom") at 3; Comments of the Republic of Latvia ("Latvia") at 1; Comments of Portugal Telecom at 8; Comments of the Republic of Panama ("Panama") at 17-21; Comments of the Philippines National Telecommunications Commission ("Philippines Commission") at 25, 29-30; Comments of Telefonica Internacional de Espana ("Telefonica de Espana") at 5; Comments of Telefonos de Mexico, S.A. de C.V. ("Telmex") at 17-19; Comments of Telefonica Del Peru, S.A. at 7-8; Comments of Telecomunicaciones Internacionales de Argentina Telintar S.A. ("Telintar") at 8; Comments of Telecommunications Service of Trinidad and Tobago Limited ("TSTT") at 1; and Comments of Videsh Sanchar Nigam Limited ("Videsh") at 2-3.

2. See Comments of the Government of Antigua and Barbuda at 1; Comments of the Caribbean Association of National Telecommunication Organizations ("CANTO") at 2; Chunghwa Telecom Comments at 2; Comments of the Communications Authority of Thailand ("CAT") at 2; Comments of the Cooperation Council for the Arab States of the Gulf at 1; Comments of Deutsche Telekom AG at 9; Comments of EMETEL of Ecuador ("EMETEL") at 1; Comments of France Telecom at 5-8; Comments of the Government of Grenada at 1; Comments of AHCIET at 3; Comments of INDOSAT at 1; Comments of ITJ at 6; Comments of JTM at 2; Comments of JTC at 2; Comments of KDD at 22-23; Comments of the Republic of Korea at 2; Comments of the RPOAs of Korea at 2; Comments of the Pacific Islands Telecommunications Association ("PITA") at 3; Comments of the Pakistan Telecommunications Authority ("PTA") at 2; Comments of SBC Communications ("SBC") at 4; Comments of Singapore Telecommunications Limited ("STL") at 2; Comments of Solomon Island Government ("SIG") at 1; Comments of the Republic of Suriname ("Suriname") at 1; Comments of Taiwan, the Republic of China ("Taiwan") at 2; Comments of Telecom Colombia at 1; Comments of Telecom Vanuatu Limited ("Telecom Vanuatu") at 1-3; Telefonica de Espana Comments at 32; Comments of the Telecommunications Authority of Singapore at 2; Telefonica del Peru Comments at 8-9; Telintar Comments at 8; TSTT Comments at 1; Comments of Telia AB (Sweden) ("Telia") at 4-5; and Comments of the Thailand Telecommunications Administration at 2.

administrations to be conducted by mutual agreement and to accord respect to applicable national legislation.

In any event, however, the Regulatory Principles contained in the WTO Agreement signed on February 15, 1997, will ensure that countries adopt settlement rates that promote real competition in the global telecommunications market. If the Commission determines that regulations beyond the Regulatory Principles are necessary, such regulations should be developed through a multilateral approach that takes into account the fact that each country, in particular developing countries, faces different cost and market restrictions.³ A multilateral approach has several advantages: (1) non-U.S. carriers also are affected by traffic-distorting practices, and should be included in discussions about traffic imbalances; (2) the ITU has already begun work on accounting rate reform, calling for cost-oriented, non-discriminatory and transparent accounting rates; and (3) many governments outside the United States share the Commission's goal of reducing consumer telephone costs.⁴ The accounting rate benchmarks proposal could serve as the initial basis for comment and review within the ITU.⁵

II. THE COMMISSION'S SETTLEMENT RATE PROPOSAL IMPACTS DEVELOPING COUNTRIES DISPROPORTIONATELY

TRICOM believes that its experience over the last four years underscores and supports the Commission's policy that real competition in foreign markets benefits U.S. users by ensuring

3. See C & W Comments at 11; EMETEL Comments at 1; Comments of GTE Services ("GTE") at 15-16; AHCET Comments at 6; JTM Comments at 2; Jamaica Comments at 6; PITA Comments at 2-3; PTA Comments at 2; Panama Comments at 24; and Telmex Comments at 21.

4. See Comments of France Telecom at 5-8.

5. Id.

that wholesale and retail rates in foreign jurisdictions are based more on underlying costs than on monopoly control. TRICOM believes, however, along with many other commenters, that an immediate, drastic reduction of accounting rates without consideration of country-specific cost, regulatory and market differences, will impede competition in the Dominican Republic's telecommunications market.⁶

The Commission's benchmark-rate methodology, which relies in part upon average network cost data supplied to the Commission by AT&T, a U.S. carrier with a vested and biased interest in the outcome of these proceedings, fails to recognize significant differences in costs incurred by carriers in countries with developing telecommunications markets.⁷ The methodology developed by the Commission does not consider the mix of a quasi-monopoly carrier with more than 90% control of the market (CODETEL) and a minor competitive carrier with less than 10% of the market (TRICOM). New entrants in developing countries, like TRICOM, have different cost structures from the formerly entrenched monopolies. Additionally, the methodology does not consider that telecommunications carriers in developing carriers have different cost structures from large U.S. carriers like AT&T. Further, developing

6. See Comments of the Government of Bolivia at 1; C&W Comments at 11; Comments of CANTO at 6; Comments of the Economic Strategy Institute ("ESI") at 4; EMETEL Comments at 2; GTE Comments at 15-16; INDOSAT Comments at 2; IDC Comments at 1; Comments of MCI Telecommunications Corporation ("MCI") at 4; PITA Comments at 2; Comments of the Republic of Panama at 22; Philippines Commission Comments at 32; Comments of Sprint Communications Company ("Sprint") at 16; Telecom Columbia Comments at 2; Comments of Telecom New Zealand Limited at 6; Telmex Comments at 21; Telefonica del Peru Comments at 13-15; Videsh Comments at 6; and Comments of Worldcom at 9.

7. See also Comments of ABS-CBN Telecom at 5-8; France Telecom Comments at 12; HKTI Comments at 28; INDOSAT Comments at 2; IDC Comments at 1; and Taiwan Comments at 2.

countries like the Dominican Republic simply cannot be expected to achieve the same level of costs as those in industrialised countries because they must invest far more in infrastructure development.⁸

TRICOM's experience in the Dominican Republic provides a real-life example of the costs incurred by a new market entrant into a newly-competitive telecommunications market. In addition to the expected costs of construction, personnel and economic incentives to customers and employees required to compete with a 62-year monopoly and normal operating costs, TRICOM's costs included: considerable legal fees connected with negotiating and enforcing the interconnection agreement with the former monopoly; lost profits due to the length of time during which TRICOM was unable to provide full service because of the former monopoly's anticompetitive actions and abuse of its dominant position; loss of revenues and bottleneck control by CODETEL due to CODETEL's failure to provide the requested T-1 lines necessary for TRICOM to serve its customer base; access charges three times higher than the Commission's rate for the national extension costs in the Dominican Republic; and an excessive contribution to the "universal service" goals of the government.

Also, because the Dominican Republic, like many emerging economies, is considered a high risk lending environment, making finance costs to build new infrastructure much higher than in industrialised countries and limited access to capital markets. As such, the Commission's adoption of benchmark-rate methodology based on the costs of a U.S. carrier, without consideration of the actual costs to carriers operating in developing telecommunications markets, axiomatically impedes the ability of such carriers to enter the telecommunications market and

8. See also INDOSAT Comments at 2.

therefore restricts, rather than promotes, competition and creates additional hurdles to carriers trying to access the capital markets.

Further, the Commission's use of three classifications to segregate all foreign carriers into high income, middle income and low income country categories (the Dominican Republic, under these categories would be considered a middle-income country) would not mitigate the negative impact that the proposed benchmark-rate methodology would have on the Dominican Republic and TRICOM.

First, the Commission's decision to impose the same requirements on lower-middle-income and upper-middle-income countries exacerbates the inappropriateness of the Commission's use of AT&T average network cost data in its benchmark-rate methodology because of the large spread of costs within the countries included in the "middle income" category. There is too much variation in the cost experience of developing countries to prescribe a single settlement rate, or even a range of settlement rates, based on existing data.⁹

Second, the events that increased TRICOM's costs also delayed its entry into the full service telecommunications market by at least two years. As such, the Commission's two year transition period (or even the alternative three-year period) for middle income countries, including the Dominican Republic, is unrealistically short. Many commenters agree that this short transition period does not give developing countries sufficient time to adjust to lower settlement rates and revenues.¹⁰ This is particularly true for new entrants in developing

9. See CANTO Comments at 6. See also, *supra* note 3.

10. See CANTO Comments at 6; COMTELCA Comments at 15; EMETEL Comments at 10; France Telecom Comments at 13; GTE Comments at 15; Philippine Commission

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countries that have to spend years fighting local as well as U.S. carriers for the right to enter the telecommunications market. Moreover, the Commission's concern that accounting rates are driving an extreme trade imbalance does not justify the imposition of a mere two-year transition period. In fact, numerous commenters point to call-back, home country direct, calling card and call-reorigination services as the primary causes of trade and payment imbalances.¹¹ Others suggest and TRICOM concurs that, if the Commission believes that U.S. international collection rates are too high, it should impose benchmarks on collection rates rather than accounting rates.¹² Further, given the fact that U.S. carrier collection rates have risen for the past 5-6 years during a time of declining accounting rates, these commenters and TRICOM suggest that the Commission examine the relationship between U.S. carrier charges to U.S. customer rates

10.(...continued)

Comments at 33; Sprint Comments at 16-18; Telefonica de Espana Comments at 63; Telefonica del Peru Comments at 13-15; TSTT Comments at 3.

11. See C&W Comments at 24; CANTO Comments at 5; China P & T Comments at 2; Chunghwa Telecom Comments at 2; Comments of the Colombia Telecommunications Regulatory Commission ("CTRC") at 2; COMTELCA Comments at 10; Deutsche Telekom Comments at 5-7; France Telecom Comments at 6; AHCIET Comments at 6; GTE Comments at 5-6; IDC Comments at 2-3; ITJ Comments at 15; JTM Comments at 3; Comments of the Government of Jamaica ("Jamaica") at 7; RPOAs of Korea Comments at 5; Latttelkom Comments at 3; Comments of the Nepal Telecommunications Corporation at 2; PITA Comments at 3; Pakistan Telecommunications Authority Comments at 3; STL Comments at 4; SIG Comments at 2; Taiwan, Republic of China Comments at 2; Telecom Colombia Comments at 1; Comments of Telecom Italia at 5-6; Telecom Vanuatu Comments at 2; Telefonica Espana Comments at 37; Telefonica del Peru Comments at 10; TSTT Comments at 6; Telstra Comments at 2; Videsh Comments at 3.

12. See HKTI Comments at 19; KKD Comments at 11-12; Comments of Pacific Bell Communications ("Pacific Bell") at 3-5; Comments of the Government of the United Kingdom at 5; Videsh Comments at 4.

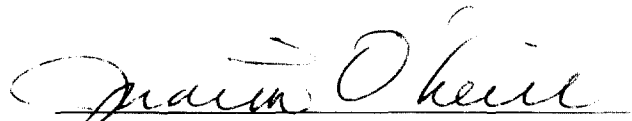
as well as expenses incurred by U.S. carriers in settlement payments to foreign carriers.¹³ It would appear that the Commission's energy would be better spent protecting U.S. users by ensuring that the savings that U.S. carriers have realized in their wholesale rates over the past 5 years are passed on to the U.S. users at the retail level.

III. CONCLUSION

TRICOM proposes that if the Commission decides to unilaterally pursue its new accounting rate scheme even in light of the WTO agreement and the ITU's work in this area, then the Commission should adopt a country-specific accounting rate proposal or alternatively should revert to the World Bank's four category system which distinguishes between lower-middle-income and upper-middle-income countries. Additionally, the Commission should extend the transition period for lower-middle-income countries to at least a four to five year time period.

Respectfully submitted,

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13. See C & W Comments at 19-20; HKTI Comments at 20; IDC Comments at 6; and Videsh Comments at 4.

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